

KRISTENSEN WEISBERG
— LLP —

January 8, 2016

VIA ECF FILING

Hon. Charles R. Breyer
United States District Court
Northern District of California
San Francisco Courthouse
450 Golden Gate Avenue
San Francisco, California 94102

Application for Appointment to Plaintiffs' Steering Committee

**Re: In Re: Volkswagen "Clean Diesel" Marketing, Sales Practices and
Products Liability Litigation (MDL 2672 CRB (JSC))**

Dear Judge Breyer,

Pursuant to Pretrial Order No. 2, please accept this correspondence as my application for appointment to a position on the Plaintiffs' Steering Committee in MDL 2672, the *Volkswagen "Clean Diesel"* litigation. I am a founding partner of Kristensen Weisberg, LLP, a Los Angeles-based Plaintiffs' law firm that focuses on both catastrophic product liability cases as well as class action litigation.

A firm's ability to file a class action lawsuit immediately after the public revelation of perhaps the clearest case of fraud in automotive history, a few days or hours ahead of 500 other firms, should not be a prerequisite for service on the Plaintiffs' Steering Committee. Television appearances or quotes in newspapers about Volkswagen's defeat device are undoubtedly great marketing. However, these platitudes provide no indication of the benefits that individual and/or their firm can provide to this litigation as a member of the Plaintiffs' Steering Committee.

On the other hand, my experience in litigation against the automotive industry in coordinated proceedings, experience in class actions and detailed knowledge about the regulations applicable to the automotive industry are all clear indicators of my qualifications to serve on the Steering Committee. Before founding my own firm, I practiced at the Bay Area products' firm O'Reilly || Collins, where I was named to *The Daily Journal's* annual 20 under 40 edition in 2010. Subsequently, I moved to Los Angeles and joined the class action firm Strange & Carpenter, which has been involved in numerous MDL proceedings. I founded Kristensen Weisberg, LLP in 2013.

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LLP

My relative youth, experience in both class actions and automotive litigation and involvement with the complexities of coordinated proceeding are qualities that will benefit the Plaintiffs' Steering Committee. I have unique experience litigating automotive products cases and class cases. I have deposed a German engineer of a German automotive company regarding changes to its proprietary safety software Mercedes-Benz. This past February, I was in Munich for depositions of Airbus engineers in an aviation matter.

In 2010, I uncovered that Toyota misled the National Highway Transportation Safety Administration ("NHTSA") when it issued a recall in Japan for defective steering rods in pickups, but not the United States. Toyota denied to regulators that it was aware of similar defects in United States. Shortly thereafter, I was the youngest member appointed to the Plaintiffs' Steering Committee in JCCP 4621 for the unintended acceleration cases. Three different judges have presided over the JCCP venue in Los Angeles Superior Court, Central Civil West. Originally, Hon. Anthony Mohr oversaw the proceedings. Judge Mohr is now in department 76 of the Stanley Mosk Branch, (213) 830-0776. Now Justice Lee Edmond presided over JCCP 4621 prior to her appointment to the California Court of Appeal Second District, (213) 830-7000. Hon. Amy D. Hogue currently oversees JCCP 4621, (213) 351-7507. I have been appointed class counsel in non-automotive consumer cases as well.

One of the most important lessons from involvement in coordinated proceedings is the need for counsel to work cooperatively. The scope and breadth of the claims requires a focus on the central issues that are common to all cases. This Court made two points clear at the December 22, 2015. First, Volkswagen has essentially admitted publicly to liability in this matter. This streamlines the litigation considerably and should provide more money to class' recovery instead of to counsel for re-proving what is already known. Second, automobiles are generally the second largest expenditures for people after their residences. In the instant case, nearly 500,000 people purchased cars under false pretenses. Those class members desperately need their vehicles for daily life. Most do not have an extra \$30,000 to indulge in a two car lifestyle while lawyers drag out litigation for years on end.

It will be critical that the Plaintiffs' Steering Committee focus on a resolution that enables class members to promptly obtain new vehicles. Volkswagen's admissions will likely result in a historic amount of class members opting out of any class wide settlement. This creates a conundrum for Volkswagen. Manufacturers often remove individual lemon law and warranty cases into coordinated proceedings where they will linger for years. The vernacular term for this tactic is sending the case to "MDL hell." These delays financially crunch plaintiffs who need their vehicle, but cannot afford to further litigate their cases for years (or as is often the case, wait two years while their case is stayed). It also incentivizes delays by defendants.

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There will inevitably be coordinated proceedings in state courts throughout the country. The Plaintiffs' Steering Committee will have an obligation not only to obtain the best relief for the class members who accept the settlement, but also to provide legal tools for members who opt out from any class wide resolution. The most effective tools will be binding legal findings that mirror Volkswagen's public admission. Second, the discovery unearthed by the Plaintiffs' Steering Committee should be available to individual plaintiffs who opt out.

I have the resources, experience and tenacity to commit to this matter. Accordingly, I am applying for appointment as a member of the Plaintiffs' Steering Committee as liaison counsel to state court proceedings.

Very truly yours,



John P. Kristensen

Enclosures: Kristensen Weisberg, LLP Firm Resume (Exhibit "1")
Counsel in Support of Appointment to Plaintiffs' Steering Committee (Exhibit "2")

cc: All Counsel (via ECF)

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